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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE  
COMPANY FOR AN ORDER OR ORDERS  
AUTHORIZING IT TO ISSUE, INCUR, OR  
ASSUME EVIDENCES OF LONG-TERM  
INDEBTEDNESS; TO ACQUIRE A  
FINANCIAL INTEREST OR INTERESTS IN  
AN AFFILIATE OR AFFILIATES; TO LEND  
MONEY TO AN AFFILIATES OR  
AFFILIATES; AND TO GUARANTEE THE  
OBLIGATIONS OF AN AFFILIATE OR  
AFFILIATES.

Docket No. E-01345A-02-0707

**RUCO'S REPLY BRIEF**

The Residential Utility Consumer Office ("RUCO") hereby files its Reply Brief in this matter. RUCO continues to support approval of Arizona Public Service Company's ("APS" or "Applicant") financing request, with appropriate conditions.

**Standard of Proof**

Sempra Energy Resources and Southwestern Power Group II, L.L.C. ("Sempra/SWPG") assert that APS's burden in this proceeding is to demonstrate the criteria of A.R.S. § 40-301 *et seq.* by "clear and convincing evidence." Sempra/SWPG cite no authority for the proposition that the standard of proof is "clear and convincing"

1 evidence. To the contrary, appellate courts have indicated that the standard of proof in an  
2 Arizona Corporation Commission ("Commission") proceeding is a lower threshold of  
3 "substantial evidence." *Tucson Electric Power Co. v. Ariz. Corp. Comm'n*, 132 Ariz. 240,  
4 645 P.2d 231 (1982); *Litchfield Park Service Co. v. Ariz. Corp. Comm'n*, 178 Ariz. 431,  
5 434, 874 P.2d 988, 991 (App. 1994). Therefore, the Commission may approve APS's  
6 application if it finds evidence of substance supporting the criteria of A.R.S. § 40-301(C).

#### 7 **Track A Principles for Resolution**

8 Simultaneously with the filing of its testimony in this matter, the Commission's  
9 Utilities Division ("Staff") filed an agreement between Staff and APS constituting their  
10 agreed-upon Principles for Resolution of APS's appeal of the Track A Decision. In the  
11 Principles for Resolution, Staff and APS agree that it is appropriate for the Commission to  
12 consider three issues in the upcoming APS rate case: 1) whether any of the Pinnacle West  
13 Energy Corporation ("PWEC") generating assets should be included in APS's rate base; 2)  
14 amount of APS's stranded investment; and 3) amount and treatment of transition costs.  
15 Arizonans for Electric Choice and Competition ("AECC") argues that granting the financing  
16 application without specifically rejecting the Principles for Resolution would undermine the  
17 APS Settlement Agreement.

18 The Principles for Resolution merely say that APS and Staff believe certain issues  
19 can be brought to the Commission. The Commission itself is not a party to the Principles  
20 for Resolution, nor does it become a party to them by approving the financing application.  
21 By approving the financing application, the Commission would not endorse any particular  
22 resolution of any issue in APS's upcoming rate case. There is no need for the  
23 Commission to take a position on the Principles for Resolution at this time.

1   **The Future of Wholesale Competition**

2           Panda Gila River, L.P.'s ("Panda") brief claims that "this proceeding has everything  
3 to do with preserving wholesale competition..." Panda Initial Post-Hearing Brief at 1.  
4 RUCO agrees that approval of the application, at least with RUCO's proposed conditions,  
5 does present the issue of whether wholesale competition has a future in Arizona.  
6 However, in light of the recent failures of competitive electric markets, the Commission's  
7 obligation to protect customers must supercede the speculative pursuit of wholesale  
8 competition. *See Ariz. Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 296, 830 P.2d  
9 807, 817 (1992) ("The Commission...was established to protect our citizens from the  
10 results of speculation, mismanagement, and abuse of power.")

11           RUCO proposed that, as a condition of approval of the financing, the Commission  
12 require APS to file an application to transfer the PWEC assets to APS and that the  
13 Commission consider in the upcoming rate case the degree to which those assets should  
14 be included in APS's rate base. Transferring the PWEC assets to APS and including  
15 some or all of them in rate base could signal the death knell for wholesale competition.  
16 Several parties oppose the Commission pursuing such a course in this proceeding.  
17 However, it is in the public interest for the Commission to take action to protect the public,  
18 even if that means returning to an integrated electric utility model at this time.

19           There is abundant evidence that competition has, in large measure, failed in the  
20 electric industry. The Commission, recognizing in its Track A Decision that regulators are  
21 unable to prevent abuses in the competitive market, prohibited the transfer of generation  
22 assets by the utilities. Decision No. 65154 at 22. RUCO's proposed condition to unite the  
23  
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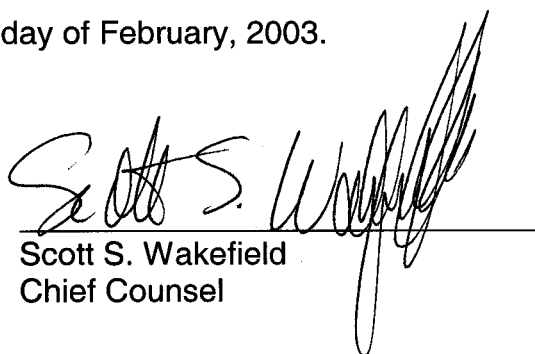
1 PWEC assets within APS is consistent with the Commission's action in Track A to maintain  
2 utility ownership of generation assets.

3 In addition, there is no evidence that a continuation toward competitive markets will  
4 produce benefits to residential customers. Again, the Commission already acknowledged  
5 as much in the Track A Decision. *Id.*

6 Finally, it is not in the public interest to allow the cost of "transitioning" to a  
7 competitive market to continue to grow when any benefits of competition remain illusory.  
8 APS has been deferring its costs incurred in transitioning to competition for future  
9 recovery. Exh. RUCO-1 at 11. At some point, residential customers will be asked to pay  
10 for some or all of those costs, but they have obtained no concrete benefits and have no  
11 realistic expectations for any benefits. It is not in the public interest to increase the  
12 potential liability to customers when no concrete benefit can be expected. The  
13 Commission should protect customers from the very real costs of continued efforts to  
14 attain specious benefits from competition.

15 RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of February, 2003.

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